

**Before the
Federal Communications Commission
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
)	File Number EB-06-SE-327
Ted Sakaida & Sons, Inc.)	NAL/Acct. No. 200732100034
Van Nuys, California)	FRN # 0001519164
)	

FORFEITURE ORDER

Adopted: December 21, 2007

Released: December 27, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of five thousand, two hundred dollars (\$5,200) against Ted Sakaida & Sons, Inc. d/b/a Ted Sakaida & Sons Trucking (“Sakaida”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WIM375, Van Nuys, California, for willful and repeated violations of Section 301 of the Communications Act of 1934 (“Act”) as amended,¹ and Sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”).² The noted violations involve Sakaida’s operation of PLMRS station WIM375 without Commission authority and failure to file a timely renewal application for that station.

II. BACKGROUND

2. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires licensees to file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.” Absent a timely filed renewal application, a wireless radio station license automatically terminates on the specified expiration date.³

3. On June 19, 2006, Sakaida filed a request for Special Temporary Authority (“STA”) to continue operating its PLMRS station WIM375 because the station license had expired on June 26,

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a) and 1.949(a).

³ 47 C.F.R. § 1.955(a)(1).

2005.⁴ The Wireless Telecommunications Bureau (“WTB”) granted Sakaida an STA to continue operating the station under call sign WQFD608 on June 21, 2006.⁵

4. Because it appeared that Sakaida may have operated the PLMRS station after the expiration of its license under call sign WIM375, the WTB referred this case to the Enforcement Bureau for investigation and possible enforcement action. On November 2, 2006, the Enforcement Bureau’s (“Bureau”) Spectrum Enforcement Division (“Division”) issued a letter of inquiry (“LOI”) to Sakaida seeking information regarding its failure to renew the station license, and its operation of the station beyond the license expiration date.⁶

5. On November 28, 2006, Sakaida filed for renewal of the STA for station WQFD608, which the WTB granted on November 29, 2006, giving Sakaida authority to operate through May 28, 2007.⁷ Also on November 28, 2006, Sakaida filed an application for renewal of the license for station WIM375, along with a waiver request to permit it to file the application late.⁸

6. In its December 4, 2006 response to the LOI,⁹ Sakaida stated that between March 27 and May 9, 2000, it submitted an application to renew the license for station WIM375.¹⁰ Though the license was renewed by the WTB on May 9, 2000 with an expiration date of June 26, 2005, Sakaida stated that it did not receive a copy of the new license. It therefore stated that it was not aware that the Commission had taken action on the renewal application, and thus, was not aware of the new expiration date.¹¹ Sakaida contended that until it was advised by the Commission that action had been taken on the renewal application, it was reasonable for it to assume that it continued to have operating authority pursuant to Section 9(b) of the Administrative Procedure Act (“APA”), 5 U.S.C § 558(c).¹² Sakaida further surmised that, although the Universal Licensing System database indicates that a renewal reminder was sent on or about April 4, 2005, it did not receive the renewal notice or the new license because the documents were sent to “7412, Van Nuys, CA 91409” rather than to Sakaida’s correct address which is

⁴ On June 20, 2006, Sakaida filed a Petition for Reconsideration and Request for Reinstatement of Authorization (“Petition”) seeking to have the expired authorization for Station WIM375 reinstated. On March 9, 2007, the WTB dismissed and denied Sakaida’s Petition (*see* Letter from Lloyd W. Coward, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission to Robert J. Keller, Esq., Counsel for Ted Sakaida & Sons Trucking (March 9, 2007) (“WTB Letter”).

⁵ STA File No. 0002655701 (granted June 21, 2006). The Wireless Telecommunications Bureau granted the STA on a secondary, non interference basis because the frequency formerly assigned to Sakaida had been reassigned to another licensee after Sakaida’s license expired. In addition, the STA was granted without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

⁶ *See* Letter from Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Ted Sakaida & Sons, Inc. d/b/a Ted Sakaida & Sons Trucking (November 2, 2006).

⁷ File No. 0002830194 (granted November 29, 2006).

⁸ File No. 0002830185 (pending).

⁹ *See* Letter from Robert J. Keller, Counsel for Ted Sakaida & Sons, Inc. d/b/a Ted Sakaida & Sons Trucking to Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 4, 2006) (“LOI Response”).

¹⁰ *Id.* at 1.

¹¹ *Id.* at 1-2.

¹² *Id.* at 1, note 2.

“P.O. Box 7412, Van Nuys, CA 91409.”¹³ Sakaida admitted that it continued to operate the station after June 26, 2005, but stated that it did so because it was not aware that its license for station WIM375 had expired. Finally, Sakaida asserted that upon learning of the expiration of the license it took immediate steps to obtain Commission authority to operate by filing a request for an STA.¹⁴

7. On May 31, 2007, the Chief, Spectrum Enforcement Division (“Division”), Enforcement Bureau (“Bureau”) released a *Notice of Apparent Liability for Forfeiture* (“NAL”)¹⁵ finding that Sakaida willfully and repeatedly operated PLMRS station WIM375 without Commission authority after its authorization expired on June 26, 2005, and failed to file a timely renewal application for the station by the date of expiration. The NAL proposed a forfeiture in the amount of six thousand, five hundred dollars (\$6,500) based on Sakaida’s apparent willful and repeated violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.¹⁶ The NAL downwardly adjusted that amount to five thousand, two hundred dollars (\$5,200)¹⁷ because Sakaida made voluntary disclosures to Commission staff and undertook corrective measures, *i.e.* filing an application for an STA and an application for renewal of the license for station WIM375, after learning of its violations but prior to any Commission inquiry or initiation of enforcement action.¹⁸

8. In a July 2, 2007 response to the NAL, Sakaida concedes that it did not file a timely application for renewal of the license for PLMRS station WIM375.¹⁹ However, it maintains that without notice of the need for it to renew its license it cannot be in violation of either Section 1.903(a) or 1.949(a) of the Rules because its actions were not “willful” under Section 301 of the Act.²⁰ It also asserts that the Commission is barred from assessing a forfeiture for violation of Section 1.949(a) (failure to file a timely renewal application) on statute of limitations grounds.²¹

III. DISCUSSION

9. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,²² Section 1.80 of the Rules,²³ and the Commission’s *Forfeiture Policy Statement*.²⁴ In

¹³ *Id.* at 2.

¹⁴ *Id.* at 2.

¹⁵ *Ted Sakaida & Son, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9962 (Enf. Bur., Spectrum Enf. Div. 2007) (“NAL”).

¹⁶ *Id.* at 9965 ¶ 10.

¹⁷ *Id.* at 9966 ¶ 12.

¹⁸ *Id.* at 9966 n. 28 (citing *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004) (forfeiture reduced for voluntary disclosure of violation and initiation of corrective action prior to Commission enforcement action)).

¹⁹ See “Petition for Reconsideration & Request for Reduction or Cancellation of Forfeiture,” filed July 2, 2007 (“Response”). We note that although Sakaida refers to its filing as a “Petition for Reconsideration” of a delegated action it is in reality a response to the NAL, and will be referred to as such in this Forfeiture Order. See 47 C.F.R. § 1.80(f)(3).

²⁰ Response at 7.

²¹ *Id.* at 3-4.

²² 47 U.S.C. § 503(b).

²³ 47 C.F.R. § 1.80.

assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.²⁵

10. We have considered Sakaida's Response in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We conclude that Sakaida willfully and repeatedly violated Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules. Further, we find no mitigating circumstances warranting a further reduction of the proposed forfeiture amount. In its response to the *NAL*, Sakaida contends that it was justified in assuming that its operating authority continued in force because it did not receive any notification that the Commission had set a "new expiration date" for its license.²⁶ Absent this notification, according to Sakaida, there can be no willful violation of Section 1.903(a).²⁷ We rejected this argument and Sakaida's interpretation of Section 558(c) of the APA in the *NAL*.²⁸ It is not the Commission's responsibility to ensure a licensee is informed; it is the licensee's responsibility to keep itself informed. Licensees are, thus, presumed to have the required notice of the need to file a renewal. Sakaida provides no new information justifying its reliance on Section 558(c) of the APA that persuades us to alter the forfeiture proposed in the *NAL*.

11. Additionally, the Commission has held that an unintended error neither nullifies nor mitigates violations of the Act or the Rules.²⁹ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Rather, the term "willful" simply requires that the violator knew it was taking or failing to take the action in question, irrespective of any intent to violate the Commission's rules.³⁰ Further, Section 503 of the Act requires that we find that a party acted either willfully or repeatedly.³¹ In the context of a forfeiture action, "repeated" means that an act was committed more than once or for more than one day, if continuous.³² Because Sakaida admits that it did not seek a timely

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²⁴ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

²⁵ 47 U.S.C. § 503(b)(2)(E).

²⁶ Response at 4-5.

²⁷ *Id.* at 6-7.

²⁸ *NAL*, 22 FCC Rcd at 9965-66 ¶ 11.

²⁹ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("stating that inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") ("*Southern California*").

³⁰ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4388.

³¹ In pertinent part, Section 503(b)(1) of the Act states that any person determined by the Commission to have "willfully or repeatedly failed to comply with . . . any rule, regulation, or order issued by the Commission . . . shall be liable to the United States for a forfeiture penalty. 47 U.S.C. § 503(b)(1) (emphasis added).

³² Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of repeated applies to both Sections 312 and 503(b) of the (continued . . .)

renewal of its license for call sign WIM375³³ and its unauthorized operation, therefore, lasted more than one day, we find that Sakaida has repeatedly violated Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules. Further, as the Commission noted in *Discussion Radio*, licensees are responsible for seeking timely renewal regardless of whether they receive a renewal notification and a failure to do so is considered a willful violation.³⁴ Thus, Sakaida has also willfully violated Section 1.949(a) of the Rules.

12. Sakaida also asserts that the Commission is barred by the one-year statute of limitations contained in Section 503(b)(6) of the Act³⁵ from assessing a forfeiture for violation of Section 1.949(a) of the Rules, failure to file a timely renewal of its operating license.³⁶ It maintains that its failure to submit a timely renewal was a one-day offense and not a continuing offense and that, since that one day was more than one year earlier than the date of issuance of the *NAL*, the Commission cannot assess a forfeiture for violation of Section 1.949(a) of the Rules.³⁷ We disagree with Sakaida's interpretation of the rule. As we stated in the *NAL*, Commission precedent is clear: A licensee's failure to file a timely renewal is a continuing violation that continues until the licensee again obtains Commission authorization to operate.³⁸ Moreover, even though *Discussion Radio*, cited both in the *NAL* and in Sakaida's response, involved a broadcast licensee, the Commission's treatment of Discussion's failure to file a timely license renewal did not turn on the different statute of limitations for broadcast versus non-broadcast licensees.³⁹ Instead, it was predicated on the Commission's decision to penalize Discussion Radio for "untimely filing and unauthorized operation . . . during the time between the expiration of the license and the untimely renewal filing."⁴⁰

13. The Commission has articulated a similar policy for the wireless services of initiating "enforcement action against the licensee for untimely filing and unauthorized operation between the expiration of the license and the late renewal filing, including, if appropriate, the imposition of fines or

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Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4388.

³³ See WTB Letter at 1.

³⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437-38 (2004) ("*Discussion Radio*") (stating that as a Commission licensee, Discussion Radio is charged with knowledge of the full range of its obligations, including its duty to timely seek renewal of its license to maintain operating authority and that this obligation attaches even if it fails to receive Commission notification regarding license renewal).

³⁵ 47 U.S.C. § 503(b)(6).

³⁶ Response at 3-4 (citing Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6)).

³⁷ Response at 3.

³⁸ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6) prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the *NAL*, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See *Discussion Radio*, 19 FCC Rcd at 7437-38 (finding that licensee should be sanctioned for both failing to file a timely renewal and unauthorized operation for the period of time (approximately 14 months) between expiration of its license and its eventual renewal filing); see also H.R. REP. NO. 101-386, at 435 (Conf. Rep.); see also *NAL* at 9964 ¶ 6.

³⁹ See, e.g., *Discussion Radio*, 19 FCC Rcd at 7437-38 (basing its decision on the continuing nature of the violations and not on statute of limitations issues); see also Response at 4.

⁴⁰ See *Discussion Radio*, 19 FCC Rcd at 7437-38.

forfeitures for these rule violations.”⁴¹ Thus, the treatment of Sakaida’s failure to file a timely renewal application as a continuing violation is consistent with the Commission’s practice of accepting late filed renewal applications in all wireless services, including PLMRS service, and approving them *nunc pro tunc* when they are filed within 30 days of the due date, but subjecting renewal applications filed more than thirty days after the expiration date to a heightened level of scrutiny.⁴² In either case, where justified, the Commission grants the renewal without prejudice to its ability to assess the appropriate forfeitures for any underlying violations of its Rules.⁴³ In Sakaida’s case, when the WTB granted the STA to Sakaida on June 21, 2006, it noted that Sakaida’s request raised the possibility of unauthorized operation and that the grant of the STA did not “preclude or prejudice any enforcement action” related to Sakaida’s action underlying the request.⁴⁴

14. Finally, despite its apparent view that “filing a [renewal] application” is “prohibited” by the rules, Sakaida filed a renewal application on November 28, 2006 for call sign WIM375, requesting a waiver of Section 1.949(a) of the Rules to do so.⁴⁵ Thus, Sakaida’s own action undercuts its assertion that failing to timely file a renewal application is a one-day violation and reinforces the Commission’s interpretation that failure to file a timely renewal is a continuing violation that continues until a renewal application is filed or, in this case, until an STA request is filed. Indeed, when the WTB granted Sakaida’s STA on June 21, 2006, it granted Sakaida the use of the same frequency it previously had, albeit with a different call sign.⁴⁶ Therefore, we affirm the decision in the *NAL* and find Sakaida liable for violation of Section 1.949(a) for the period May 29, 2006 (one year prior to adoption of the *NAL*) until June 19, 2006 (the date Sakaida filed its STA application).⁴⁷

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁴⁸ and sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules,⁴⁹ Ted Sakaida & Sons Trucking IS LIABLE FOR A MONETARY FORFEITURE in the amount of five thousand, two hundred dollars

⁴¹ See Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98-20, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485-86 (1999) (“*ULS MO&O*”) (stating that enforcement action may be initiated against licensees in the wireless services who file late renewal applications for both the untimely filing and any unauthorized operations).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ STA File No. 0002655701 (granted June 21, 2006).

⁴⁵ Response at 3.

⁴⁶ STA File No. 0002655701 (granted June 21, 2006). The WTB granted the STA on a secondary, non-interference basis because the frequency formerly assigned to Sakaida had been reassigned to another licensee after Sakaida’s license expired. In addition, the STA was granted without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

⁴⁷ See *In the Matter of Petition for Reconsideration Concerning Liability of Benito Rish, Licensee of Radio Station WREM(AM) Monticello, ME*, Memorandum Opinion and Order, 11 FCC Rcd 2861, 2861 (finding that “[a]lthough the violative conduct began outside the bounds of our forfeiture authority, that does not undercut our ability to impose a fine for the days that the violation continued within the statutory period preceding the ... *NAL*”).

⁴⁸ 47 U.S.C. § 503(b).

⁴⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

(\$5,200) for willful and repeated violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁵⁰ Payment of the forfeiture must be made by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.⁵¹

17. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Ted Sakaida & Sons Trucking, P.O. Box 7412, Van Nuys, CA 91409 and its counsel, Robert J. Keller, Esq., Law Office of Robert J. Keller, P.C., P.O. Box 33428, Washington, DC 20033.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

⁵⁰ 47 U.S.C. § 504(a).

⁵¹ See 47 C.F.R. § 1.1914.